

Summary of Amendments to
Ordinance No. 669 - Governing Sale, Use and Possession of
Tobacco and Tobacco Related Products

On April 1, 2019, the City Council of the City of Austin, Minnesota, adopted an Ordinance amending the existing Ordinance governing the sale, use and possession of Tobacco and Tobacco related Products. This summary of said ordinance is published pursuant to Minn.Stat. § 412.191, subd. 4. A full copy of the complete text of the Ordinance adopted by the Council may be obtained from City Hall located at 500 Fourth Avenue NE, Austin, Minnesota 55912, or by calling 507-437-9940 and requesting a copy be provided by either U.S. Mail or by email. There is no cost for a copy.

The existing Ordinance governing the sale, use and possession of tobacco and tobacco related products is found in the City Code in Section 6.34. Unless specifically stated herein, the provisions of Section 6.34 remain unchanged. The changes to Section 6.34 include the following:

A. Section 6.34, Subd. 1, is restated to reflect an updated legislative purpose and intent for the Ordinance. More specifically, this subdivision now states as follows:

Because the city recognizes that many retailers sell tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine and lobelia delivery products to persons under the age of 21; and because sales to persons under the age of 18 are violations of both state and federal laws; and because studies, which the city hereby accepts and adopts, have shown that youth use of any commercial tobacco product has increased to 26.4% in Minnesota; and because nearly 90% of cigarette users begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; and because commercial tobacco use has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this section shall be intended to regulate the sale of tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine and lobelia delivery devices for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious effects associated with the use and initiation of commercial tobacco products and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time.

B. Previously, the ordinance governed the sale, use, and possession of “tobacco, tobacco products, and tobacco related devices.” Each of these terms was and is defined in the ordinance. The ordinance now governs the sale, use, and possession of “licensed products” which includes “any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.” Each of these terms is now defined as follows (See Section 6.34, Subd. 2):

1. ***TOBACCO or TOBACCO PRODUCTS.*** Any products containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, sorted, sniffed, or ingested by any other means or any component, part, or accessory of a tobacco product, including, but not limited to, any substance or item containing tobacco leaf, cigarettes; cigars; pipe tobacco; snuff, fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plus cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking or both for chewing and smoking. ***TOBACCO PRODUCTS*** excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco

dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

2. ***TOBACCO RELATED DEVICES.*** Any tobacco product as well as a pipe, rolling papers, wraps or other device intentionally designed or intended to be used with tobacco products. Tobacco related device includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. Tobacco related devices may or may not contain tobacco.

3. ***ELECTRONIC DELIVERY DEVICE.*** Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic delivery device shall include, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. Electronic delivery device shall include any component part of a product, whether or not marketed or sold separately. Electronic delivery device shall not include any product that has been approved or certified by the U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

4. ***NICOTINE OR LOBELIA DELIVERY PRODUCT.*** Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not a tobacco or an electronic delivery device as defined in this section. Nicotine or lobelia delivery product does not include any product that has been approved or otherwise certified for legal sale by the U.S. Food and Drug Administration as a tobacco-cessation product, a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

C. The Ordinance did and continues to prohibit the sale of “Loosies” but the definition of “Loosies” was updated. The term is now defined as follows (See Section 6.34, Subd. 2):

LOOSIES. The common term used to refer to single or individually packaged cigars or cigarettes, or any other licensed product that has been removed from its intended retail packaging and offered for sale. LOOSIES does not include individual cigars with a retail price, after any discounts are applied and before any sales taxes are imposed, of at least \$4.00 per cigar.

D. The age for applying for a license to sell “licensed products” (see above definition) is raised from 18 to 21 (See Section 6.34, Subd. 5(A)).

E. The minimum age to purchase “licensed products” (see above definition) is raised from 18 to 21 (See Section 6.24, Subds. 6 and 11), and a purchaser's age must be verified by government issued photographic identification unless the purchaser is over 30 years of age (See Section 6.34, Subd. 6).

F. Locations where “licensed products” (see above definition) may be sold from “vending machines” (defined in the ordinance) are limited to those establishments that bar entry to anyone under the age of 21 (See Section 6.34, Subd. 7). The prior Ordinance allowed the use of vending machines in establishments that bar entry to anyone under the age of 18.

G. State law requires “Compliance Checks” (defined in the ordinance) involving the use of minors between the age of 15 and 17 who enter the licensed establishment for the purpose of attempting to purchase “licensed products” (see above definition). The Ordinance retains these required compliance checks but allows the City to conduct additional compliance checks involving the use of adults between the age of 18 and 20 (See Section 6.24, Subd. 10).

H. Possession and Use of licensed products (see above definition) by those under the age of 21 is not unlawful in the following circumstances (See Section 6.34, Subd. 12):

Religious, Spiritual, or Cultural Ceremonies or Practices. Nothing in this section shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a person under the age of 21 as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

I. The administrative penalties for a license violation under the Ordinance have been increased. The new penalties are described as follows (See Section 6.34, Subd. 13):

Any licensee found to have violated this section, or whose employee shall have violated this section, shall be charged an administrative fine of \$200 for a first violation of this section; \$500 for a second offense at the same licensed premises within a 24-month period; and \$750 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

Passed by the Austin City Council this 1st day of April, 2019

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ATTEST:

APPROVED:

/s/ City Recorder Tom Dankert

/s/ Mayor Thomas A. Stiehm

This ordinance was introduced on April 1, 2019; approved on April 1, 2019; was published in the Austin Daily Herald on April 6, 2019; and becomes effective April 14, 2019.